

U S Army Corps
of Engineers
Huntington District

Public Notice

In reply refer to Public Notice No. 200600821 Issuance Date: **AUG 21 2006**

Stream: Laurel Fork Closing Date: **SEP 20 2006**

Please address all comments and inquiries to:
U.S. Army USACE of Engineers, Huntington District
ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street
Huntington, West Virginia 25701-2070 Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the USACE request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Catenary Coal Company
5914 Cabin Creek Road
Eskdale, West Virginia 25075

LOCATION: The proposed project would be constructed approximately 2.1 miles southwest of Eskdale in the Cabin Creek District of Kanawha County, West Virginia. The project area can be found at latitude 38°04'06" and longitude 81°28'26" on the Eskdale USGS quadrangle. The proposed project would result in disturbances to 1st Left, 2nd Left and 3rd Left Unnamed Tributaries of the Left Fork of Laurel Fork and to the 1st Left Unnamed Tributary of the 1st Left Unnamed Tributary of the Left Fork of Laurel Fork. All of these unnamed tributaries exhibit surface water connections to Laurel Fork of Cabin Creek. Cabin Creek ultimately flows into the Kanawha River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into 1,279 linear feet (0.206acre) of intermittent stream channels in conjunction with the construction, operation and reclamation of the Laurel Fork Deep Mine approved under Surface Mining Control and Reclamation Act (SMCRA) permit U-3001-98 Incidental Boundary Revision (IBR) No. 5. Project components would include a temporary disposal site (Valley Fill LF-3) and an associated sediment pond (Pond LF-3) and two road crossings. Details regarding these proposed activities are listed in the table below.

Proposed Activity	Stream Location	Quantity of Dredged/Fill Material Below Ordinary High Water Mark (cubic yards)	Intermittent Stream Channel Impacts (Linear Feet)	Intermittent Stream Channel Impacts (Acres)
Valley Fill LF-3	1 st Left Unnamed Tributary of the Left Fork of Laurel Fork	79.13	563	0.072
Sediment Pond LF-3	1 st Left Unnamed Tributary of the Left Fork of Laurel Fork	132.44	411	0.067
Access Road 1	2 nd Left Unnamed Tributary of the Left Fork of Laurel Fork	38.43	200	0.041
Access Road 2	3 rd Left Unnamed Tributary of the Left Fork of Laurel Fork	38.26	105	0.026

Under the original SMCRA Permit No. U-3001-98, Catenary Coal Company, LLC was authorized to place dredged and/or fill material into waters of the U.S. under NWP 21 (White Oak Creek-Mining Activities-199800372-1) described under the December 13, 1996 Federal Register, Final Notice Issuance, Reissuance, and Modification of Nationwide Permits (61 FR 65874) in conjunction with the: development of a mine portal and operational area; construction of a haulroad, a temporary overburden storage area (sidehill fill), drainage control Pond LF-1; and, relocation of a 1,200-foot (0.26-acre) segment of the Left Fork of Laurel Fork. These activities were completed and mitigated under the original NWP21. In relation to a subsequent revision to the original SMCRA permit (U-3001-98, IBR No. 2), dredged and/or fill activities were proposed to enclose a segment of the previously relocated stream channel in a 66-inch culvert (340 linear feet/0.06 acre/433 cubic yards), in order to minimize impacts to the stream, as authorized under NWP21 (200201158 – Left Fork Laurel Creek) under the January 15, 2002 Federal Register, Final Notice of Issuance of Nationwide Permits (67 FR 2020). However, these activities were never initiated.

The purpose of the proposed project is construct attendant and associated features (i.e. sediment control structures, overburden disposal, etc.) to facilitate efficient extraction of coal reserves in the SMRCA permitted area while providing improved accessibility and adequate ventilation. Plans for the proposed facility are attached to this public notice.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant has not submitted a Compensatory Mitigation Plan (CMP) to compensate for temporary impacts to waters of the U.S. that are regulated by the USACE.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the WVDEP.


HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. A mist-net survey is scheduled for roosting season 2007. Additionally, the applicant would be required to investigate the project area for the presence of abandoned mine portal or other openings that could support winter and summer colonies for the Virginia big-eared bat and hibernaculum for the Indiana bat. This public notice serves as a request to the Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the ESA Species Act of 1972 (as amended).

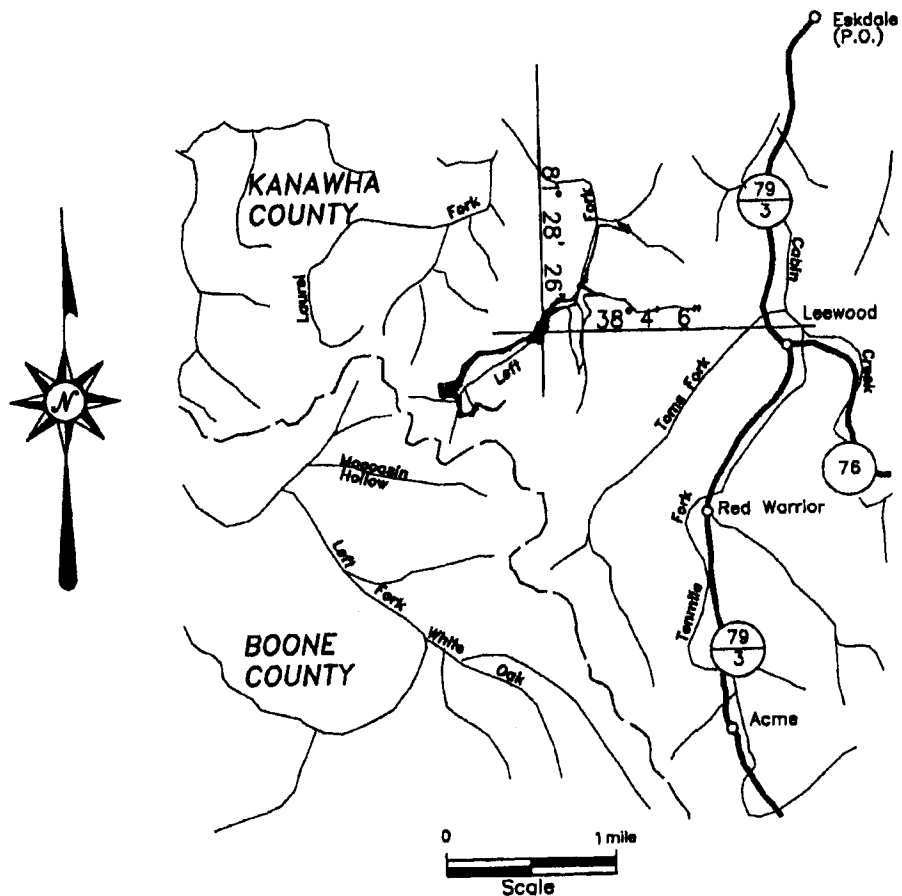
PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest, which may be adversely affected, and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

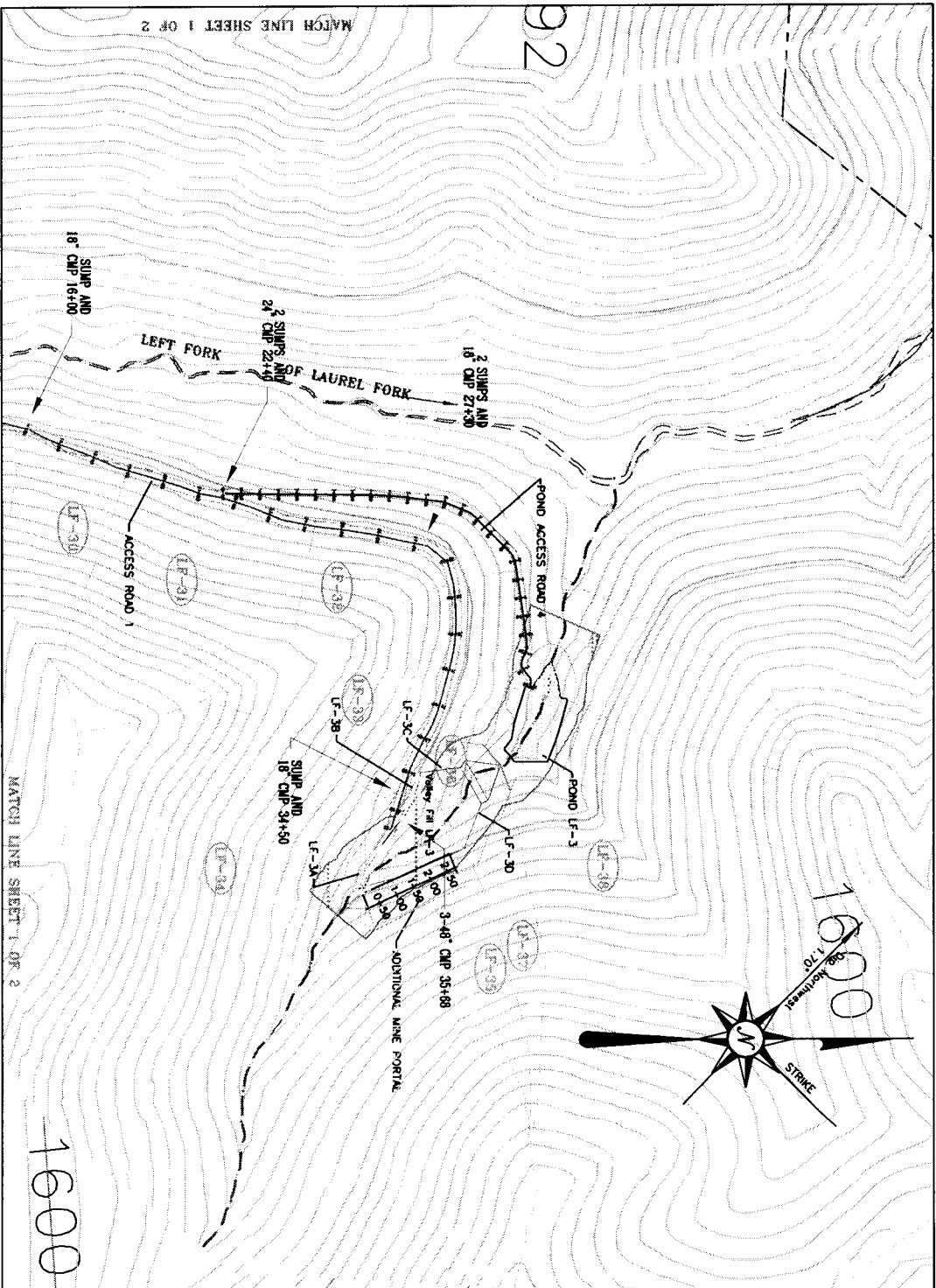
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources.

for 
Ginger Mullins, Chief
Regulatory Branch

(W)



10f9



LEGEND

- Permitted Area
- 100' Stream Buffer Zone
- IRR No. 5 Area Deleted
- IRR No. 5 Area Added
- Overbonded Area
- Mineral Removal Area
- Drainage System
- Adjacent Permit Area
- 100' Stream Buffer Zone
- Previous Pre-low Mining Disturbance
- Windbreak Crop Line
- Natural Drainage
- Direction of Flow
- Core Hole
- Perimeter Marker
- Drainage Area Division
- NPDES Outfall
- NPDES Stream Monitoring Point
- NPDES Outfall W0093751
- Property Line
- Gas Line
- Overhead Powerline

I, the undersigned, hereby certify that this map is correct and shows all the information to the best of my knowledge and belief required by the Surface Mining Laws of this State.

APPROVED BEFORE ME A Notary Public,
this _____ day of _____, 20____.

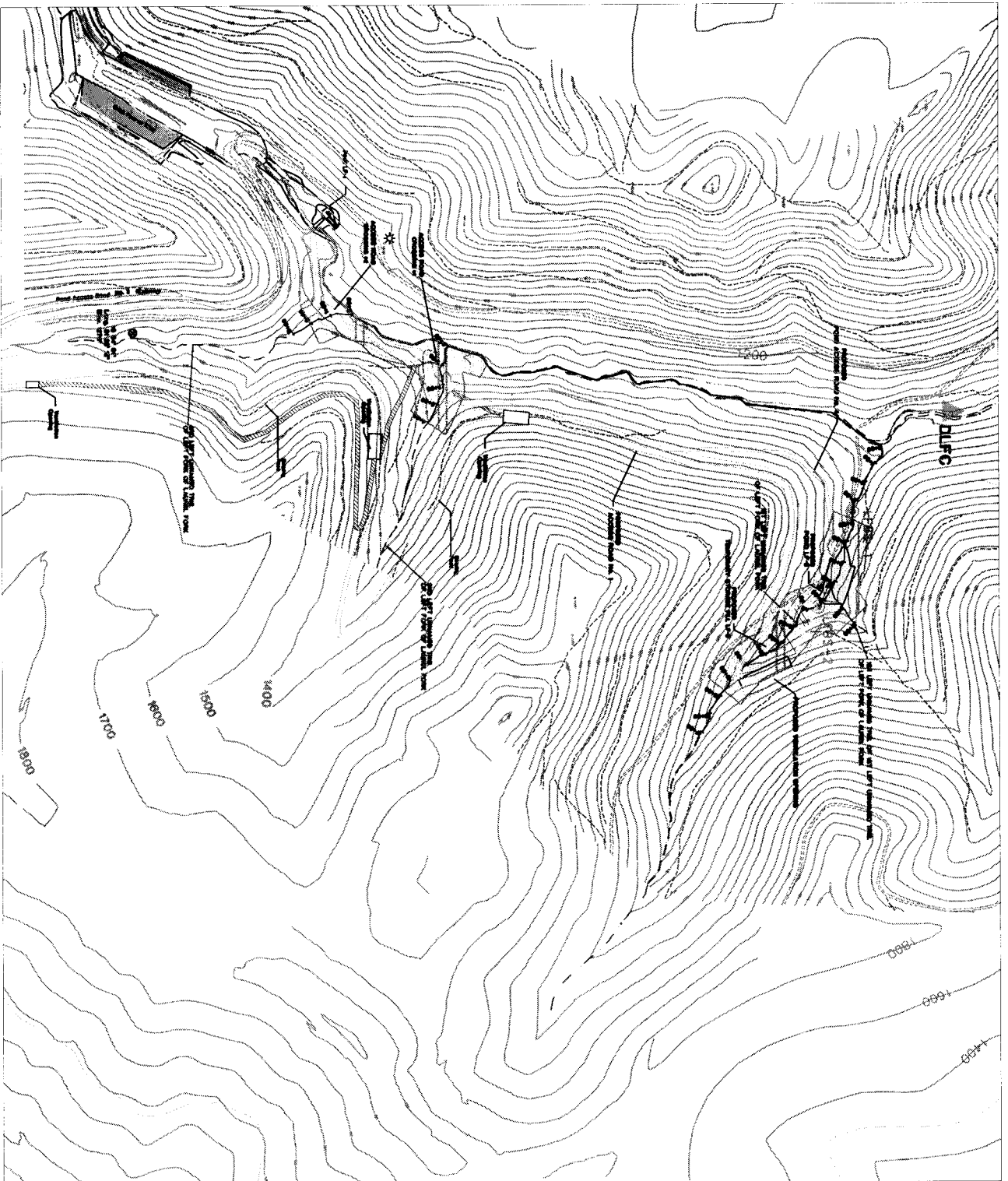
LAUREL FORK DEEP MINE
U-3001-98 IRR#5 WV/015338 MOD NO. 5
CATEMARY COAL COMPANY
5914 COBIN CREEK RD. ESSEX, WV 25075
PROPOSAL/DRAINAGE MAP

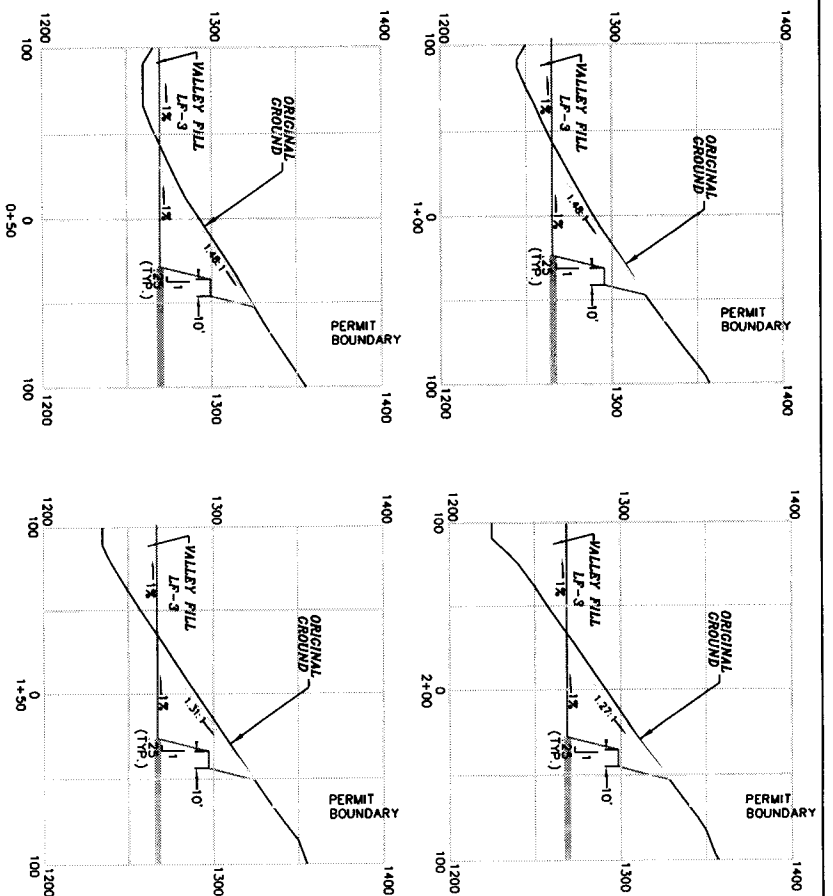
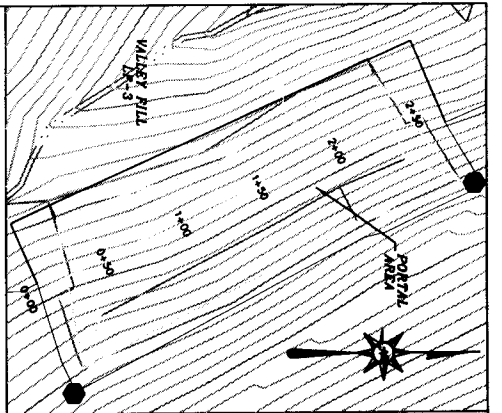
SHEET 2 OF 2

DATE: 6/23/05	REV. DATE:	SCALE: 1"=200'	PG. NO.: 201-98 IRR#5
FILE NO.: 5914	DR. NO.:	PG. 1/2	ATT:
DRAWN BY: JAC	CHK BY: JAC	APPROV. BY: JAC	PAGE NO.: 2 OF 2



3 of 9






LEGEND

ORIGINAL GROUND
REGRADE
DURING MINING
WINFREDE OUTCROP
PERMIT BOUNDARY
PERIMETER MARKER

NOTE: MATERIAL FROM VF LF-3 WILL BE USED TO RECLAIM NINE PORTAL.

<h1 style="margin: 0;">PORTAL PLAN VIEW AND CROSS SECTIONS</h1> <p style="margin: 5px 0 0 400px;">1 OF 1</p>			
<h2 style="margin: 0;">LAUREL FORK DEEP MINE</h2> <p style="margin: 5px 0 0 350px;">U-3001-98 IBR # 5</p>			
<h3 style="margin: 0;">CATENARY COAL COMPANY</h3> <p style="margin: 5px 0 0 300px;">5914 CABIN CREEK RD. ESRDALE, WV 26075</p>			
DRAWING BY: ZDA	CHECKED BY: JSC	APPROVED BY: JSC	
DATE	DESCRIPTION OF REVISION	DATE	DESCRIPTION OF REVISION



SUMMIT ENGINEERING, INC.

400 ALLEN DRIVE SUITE 100

CHARLESTON, WV 25302

PERMITS: KY, LEHIGH, NY, OHIO, VA, LOCAL, WV, INDIANA, PA

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS PLAN IS CORRECT AND SHOWS ALL THE INFORMATION TO THE BEST OF MY KNOWLEDGE AND BELIEF REQUIRED BY THE SURFACE MINING LAWS OF THIS STATE.

APPROVED BEFORE ME A NOTARY PUBLIC

THIS _____ DAY OF _____, 20____

SIGNED: _____

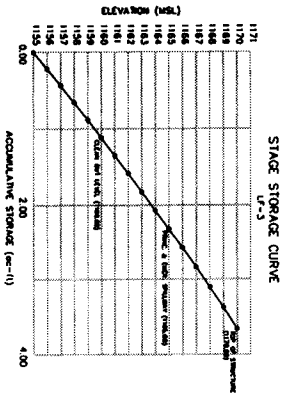
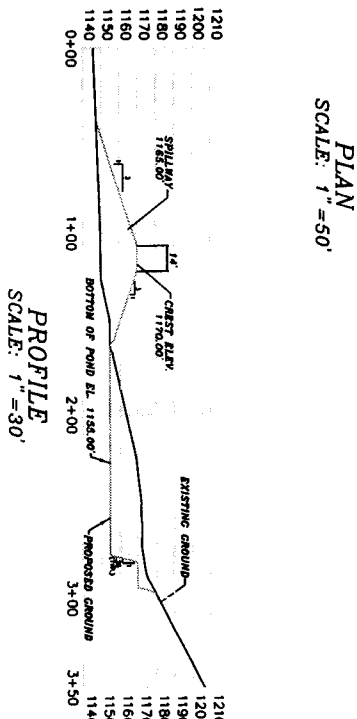
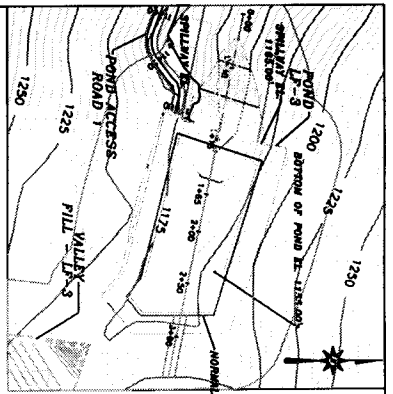
RELEASED: PORTAL, DMC

PROJECT NO. 7151-010

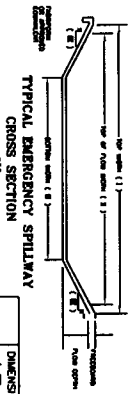
DATE: 6/24/05

SCALE: AS NOTED

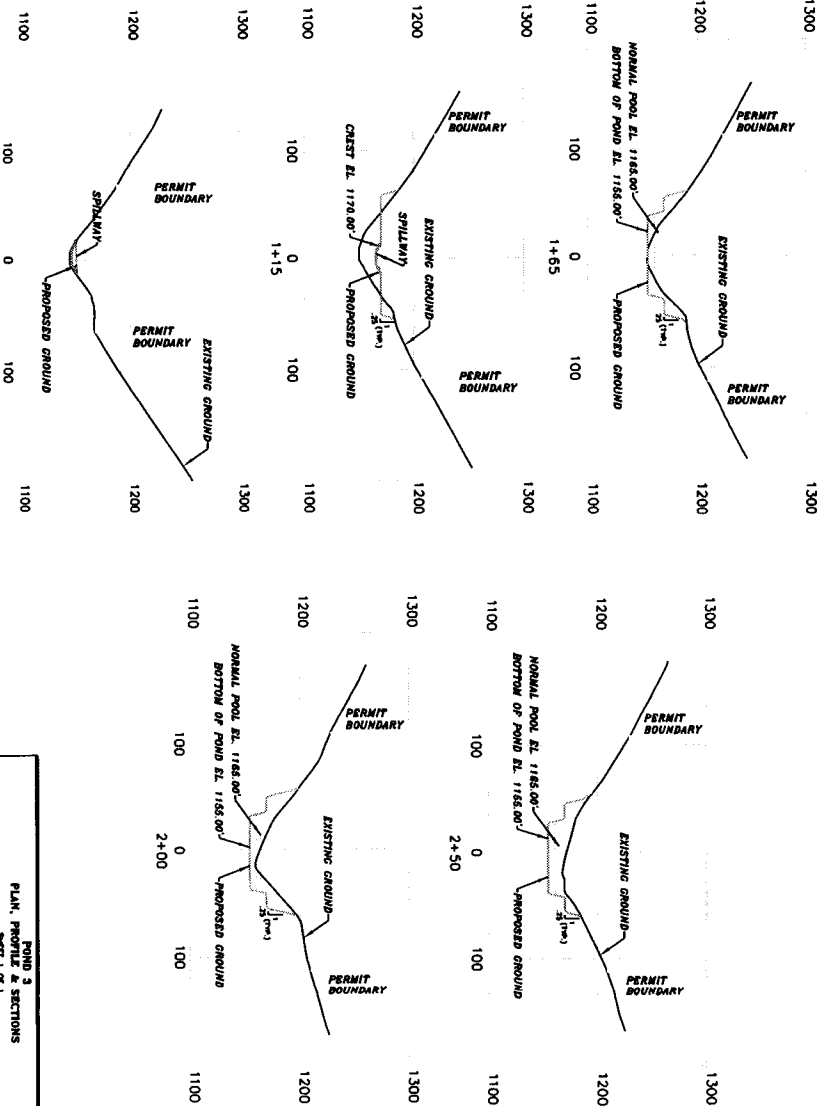
PRINT DATE: 6/24/05



- Note 1: Spillway to be extended into rock 0.25:1 (H:V) or lined with 2:1 (H:V) slopes. Foundation (for approved standard) installation shall be to manufacturer's specifications.
- Note 2: Spillway downstream conveyance channel (rock or concrete) shall be lined with 2:1 (H:V) slopes. The following cut slopes shall be used during excavation of ponds, spillways, channels, and access roads.
- Note 3: MATERIAL SLOPE (H:V)
- | | |
|----------------|--------|
| Durable Rock | 0.25:1 |
| Weathered Rock | 1:1 |
| Soil | 2:1 |



SECTIONS SCALE: 1"=50'

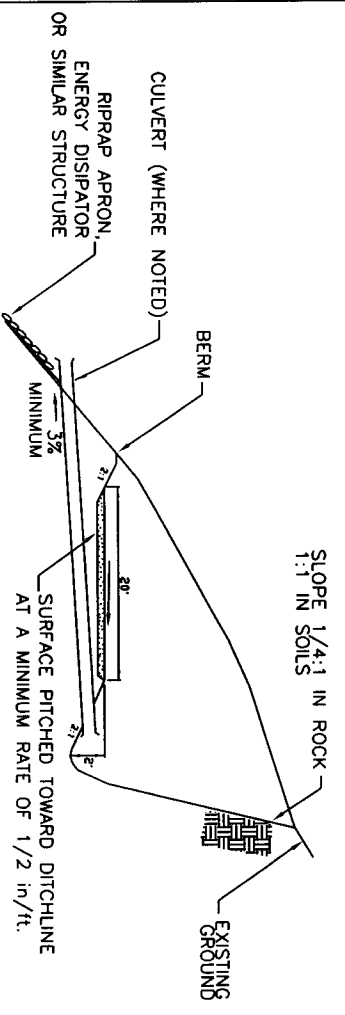
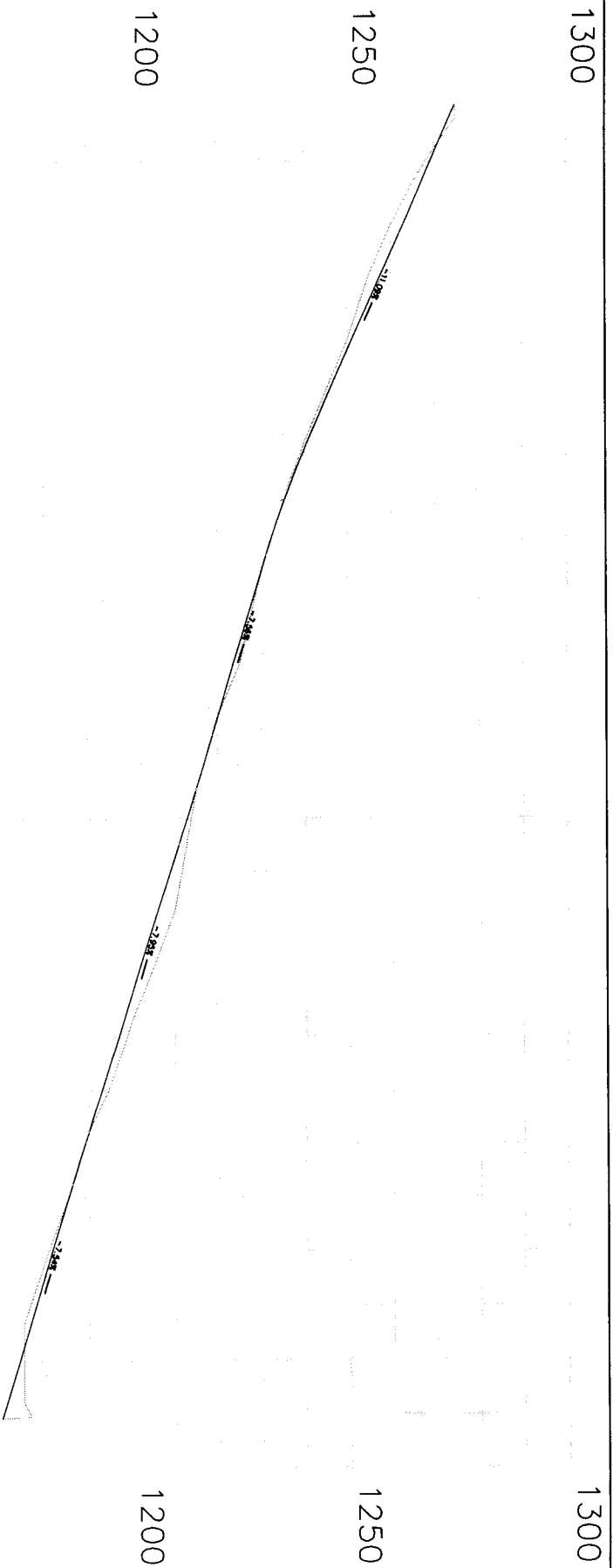


LEGEND

- EXISTING GROUND
- PROPOSED GROUND
- PERMIT BOUNDARY
- NORMAL POOL EL. 1165.00'
- SPILLWAY
- CHES DAM

POND 3 PLAN, PROFILE & SECTIONS SHEET 1 OF 1	
LAUREL FORK DEEP MINE U-3001-88, BRIS W/01538 MOD. No. 5 5414 CHS ORDER NO. 15002, BY 15003	
DRAWN BY: CHECKED BY: DESIGNED BY: PROJECT NO. 3001-88	DATE: 7/17/90 SCALE: 1"=50' SHEET NO. 3001-88
STUART ENGINEERING, INC. CONSULTING ENGINEERS 1000 N. 10TH ST., SUITE 100 FARGO, ND 58103	

7069



TYPICAL POND ACCESS ROAD 4
CUT X-SECTION
N.T.S

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS MAP IS CORRECT AND SHOWS ALL THE INFORMATION TO THE BEST OF MY KNOWLEDGE AND BELIEF REQUIRED BY THE SURFACE MINING LAWS OF THIS STATE.

SIGNATURE _____

ACKNOWLEDGED BEFORE ME A NOTARY PUBLIC, _____

THIS _____ OF _____, 20____

CATENARY COAL COMPANY
5914 CABIN CREEK RD. ESKDALE, WV 25075
POND ACCESS ROAD 4
PROFILE AND TYP. SECTION

SUMMIT ENGINEERING
Charleston, WV
Martinsburg, WV
Morgantown, WV

DATE: 7/12/05	REV. DATE	SCALE: 1"=100'	PER. NO: U-3001-98 BR #5
FILENAME: _____	DISK NO:	PLOT DATE: 7/12/05	ATT:
DRAWN BY: ZDA	CHK BY: JSC	APPROD. BY: JSC	PAGE NO:

8 of 9

